

ORDINANCE NO. _____

**AN ORDINANCE CONCERNING HUMAN RIGHTS AND
AMENDING SECTIONS 4.613, 4.615, 4.620, 4.625, 4.630, 4.635,
AND 4.645 TO THE EUGENE CODE, 1971.**

The City of Eugene does ordain as follows:

Section 1. Section 4.613 of the Eugene Code, 1971, is amended as follows:

4.613 Human Rights.

- (1) Findings. The city finds that discrimination on the basis of race, religion, color, sex, national origin, ethnicity, marital status, familial status, age, sexual orientation, ***gender identity***, source of income and disability exists within the city. The city finds that discrimination based on race, religion, color, sex, national origin, ethnicity, marital status, familial status, age, sexual orientation, ***gender identity***, source of income and disability poses a substantial threat to the health, safety and general welfare of the citizens of Eugene. The city further finds that existing state and federal prohibitions against discrimination are not adequate and, therefore, the city deems it necessary and proper to enact a local ordinance to address these issues.
- (2) Purpose. The city values the dignity and worth of all human beings and is committed to promoting justice, equity and inclusivity by respecting cultural and individual diversity and fostering mutual understanding among all people regardless of race, religion, color, sex, national origin, ethnicity, marital status, familial status, age, sexual orientation, ***gender identity***, source of income, or disability. It is the intent of the city that all people have an equal opportunity to participate fully in the life of the city and that discriminatory barriers to equal participation in employment, housing and public accommodations be removed. The city has a compelling interest in eradicating and preventing discrimination based on race, religion, color, sex, national origin, ethnicity, marital status, familial status, age, sexual orientation, ***gender identity***, source of income, or disability, and in ensuring equal opportunity in employment, housing and public accommodations. These code provisions represent the least restrictive means of achieving the city's objectives. In furtherance of this policy, the provisions of sections 4.613 to 4.655 of this code shall be broadly construed, consistent with

their remedial purpose. The purpose of including familial status, sexual orientation, **gender identity**, ethnicity and source of income in these nondiscrimination code provisions is to ensure that people are treated fairly and without regard to these issues in the matters of employment, housing and public accommodations. The inclusion of familial status, sexual orientation, **gender identity**, ethnicity and source of income in these code provisions is not intended to and shall not be interpreted to establish or require affirmative action or quotas of any kind.

Section 2. Section 4.615 of the Eugene Code, 1971, is amended by adding the definition for “gender identity” in alphabetical order, and by amending the definitions for “Discriminate or discrimination” and “Source of income” as follows:

4.615 Human Rights - Definitions. For purposes of sections 4.615 to 4.655, the following shall mean:

Discriminate or discrimination. A different and unequal treatment because of race, religion, color, sex, national origin, ethnicity, marital status, familial status, age, sexual orientation, **gender identity**, source of income, or disability.

Gender Identity. A person’s actual or perceived sex, including a person’s gender-related identity, appearance, expression or behavior, whether or not that identity, appearance, expression or behavior is different from that stereotypically associated with the person’s assigned sex at birth.

Source of income. The means by which a person supports [~~his or her self~~] **the person**, and the person’s dependents, including but not limited to money and property from:

- (a) Any occupation, profession, activity, contract, settlement or agreement;
- (b) Federal or state payments;
- (c) Court-ordered payments;
- (d) Gifts, bequests, annuities, life insurance policies, and compensation for any illness or injury, but excluding any money or property derived in a manner made illegal by any law, statute or ordinance.

Section 3. Sections 4.620, 4.625, 4.630, 4.635, and 4.645 of the Eugene Code, 1971, are amended as follows:

4.620 Human Rights - Employment Practices.

(1) It shall be an unlawful employment practice:

- (a) For an employer to refuse to hire, employ or promote, to bar or discharge from employment, or to discriminate in compensation or in terms, conditions or privileges of employment:
 - 1. Because of an individual's race, religion, color, sex, national origin, ethnicity, marital status, familial status, age, sexual orientation, ***gender identity***, or source of income; or
 - 2. Because an individual is a person with a disability which, with reasonable accommodation by the employer, does not prevent the performance of the work involved; or
 - 3. Because of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262.

However, discrimination is not an unlawful employment practice if such discrimination results from a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business.

(b) *For an employer to not allow an employee access to the restroom that the employee deems most appropriate for the employee's gender identity.*

- ([b]c) For a labor organization to exclude or expel from its membership, or otherwise to discriminate in any way against any individual:
 - 1. Because of an individual's race, religion, color, sex, national origin, ethnicity, marital status, familial status, age, sexual orientation, ***gender identity***, source of income, or because an individual is a person with a disability; or
 - 2. Because of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262.

([e]d) For an employer or employment agency to print or circulate, or cause to be printed or circulated, any statement, advertisement, or publication, or to use any employment application form, or make any inquiry in connection with prospective employment which expresses, directly or indirectly, any limitation, specification or discrimination, or any intent to make such limitation, specification or discrimination:

1. Because of an individual's race, religion, color, sex, national origin, ethnicity, marital status, familial status, age, sexual orientation, **gender identity**, source of income, or because an individual is a person with a disability; or
2. Because of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262, unless based upon a bona fide occupational qualification reasonably necessary to the normal operation of the employer's business, or unless otherwise provided by federal law.

Unless a determination is made that a designation expresses an intent to limit, specify or discriminate, identifying employees according to race, religion, color, sex, national origin, ethnicity, marital status, familial status, age, sexual orientation, **gender identity**, source of income, or disability does not violate this section.

([d]e) For an employment agency to classify or refer for employment, or to fail or refuse to refer for employment, or otherwise to discriminate in any way against any individual:

1. Because of the individual's race, religion, color, sex, national origin, ethnicity, marital status, familial status, age, sexual orientation, **gender identity**, source of income, or because an individual is a person with a disability; or
2. Because of a juvenile record, that has been expunged pursuant to ORS 419A.260 and 419A.262.

However, it shall not be an unlawful practice for an employment agency to classify or refer for employment any individual where such classification or referral results from a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business, or where such classification or referral is allowed under federal law.

([e]f) For any person, whether an employer or an employee, to assist, induce, compel or coerce the doing of any of the acts forbidden under sections 4.613 to 4.640 of this code, or to attempt to do so.

([f]g) For a vocational, professional, or trade school licensed to operate in Oregon to refuse admission to or discriminate in its admission against or discriminate in giving instruction to any otherwise qualified person because of race, religion, color, sex, national origin, ethnicity, marital status, familial status, age, sexual orientation, **gender identity**, source of income, or because an individual is a person with a disability.

([g]h) For an employer, labor organization, employment agency or a local joint committee controlling apprentice training programs:

1. To deny or withhold from an individual the right to be admitted to or participate in a guidance program, an apprenticeship training program, an on-the-job training program, or other occupational training or retraining program;
2. To discriminate against an individual in the terms, conditions or privileges of such programs; or
3. To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any application form for such programs, or to make an inquiry in connection with such programs which expresses, directly or indirectly, any limitation, specification, or discrimination, or any intent to make any such limitation, specification, or discrimination, because of the race, religion, color, sex, national origin, ethnicity, marital status, familial status, age, sexual orientation, **gender identity**, or source of income of any person, or because an individual is a person with a disability.

For purposes of this subsection (1), receipt or alleged receipt of treatment for a mental disorder shall not constitute evidence of a person's inability to perform the duties of a particular job or position.

(2) It shall be an unlawful employment practice for any person to discriminate against an individual in any manner set forth in subsection (1) of this section because of the race, religion, color, sex, national origin, ethnicity, marital status, familial status, age, sexual orientation, **gender identity**, source of income or disability of any other person with whom the individual associates.

(3) It shall not be an unlawful employment practice under this section:

(a) For a bona fide church or other religious institution, including, but not limited to, a school, hospital or church camp, ~~[from preferring]~~ **to prefer** an employee or applicant for employment of one religious sect or persuasion over another when:

1. That religious sect or persuasion to which the employee or applicant belongs is the same as that of such bona fide church or other religious institution;
2. In the opinion of such bona fide church or other religious institution, such a preference will best serve

the purposes of such bona fide church or other religious institution; and

3. The employment involved is closely connected with or related to the primary purposes of the bona fide church or other religious institution, and is not connected with a commercial or business activity which has no necessary relationship to the bona fide church or other religious institution, or to its primary purpose.
- (b) For an employer, labor organization, employment agency or local joint committee controlling apprentice training programs to select an apprentice on the basis of the ability to complete the required apprenticeship training before attaining the age of 70 years.
- (c) For an employer or labor organization to provide or make financial provision for child care services of a custodial or other nature to its employees or members who are responsible for a minor child. As used herein, "responsible for a minor child" means having custody or legal guardianship of a minor child or acting in loco parentis to the child.
- (d) ***For an employer to establish and enforce a reasonable dress code or policy, so long as the employer provides for reasonable accommodation of a person's gender identity.***
- (4) The compulsory retirement of an employee at any age shall not be an unlawful employment practice if lawful under federal law.

4.625 **Human Rights - Fair Employment Practice Provisions in City Contracts.**

- (1) The city and all its contracting agencies, or departments shall include in all contracts negotiated or renegotiated by them with contractors the following provisions:
 - "(1) During the performance of this contract, the contractor agrees as follows:
 - (a) The contractor will not discriminate against any employee or applicant for employment because of an individual's race, religion, color, sex, national origin, ethnicity, marital status, familial status, age, sexual orientation, ***gender identity***, or source of income, a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262, or because an individual is a person with a disability which, with reasonable accommodation by the employer does not prevent the performance of the work involved, unless based upon a bona fide occupational qualification

reasonably necessary to the normal operation of the employer's business.

- (b) Those contractors employing 15 or more individuals will develop and implement a plan to insure that applicants are employed, and that employees are treated during employment, without regard to race, religion, color, sex, sexual orientation, **gender identity**, age, disability, national origin, or ethnicity. Such plan shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (c) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the human rights commission setting forth the provisions of this nondiscrimination clause.

“(2) The contractor will, prior to commencement and during the term of this contract, provide to the city such documentation, and permit any inspection of records as may be required or authorized by rules adopted by the city manager to determine compliance with paragraph (1) above.

“(3) If upon an investigation conducted pursuant to rules adopted by the city manager in accordance with section 2.019 of the Eugene Code, 1971, there is reasonable cause to believe that the contractor or any subcontractors of the contractor have failed to comply with any of the terms of paragraphs (1) or (2), a determination thereof shall be made in accordance with the adopted rules. Such determination may result in the suspension, cancellation or termination of the principal contract in whole or in part and/or the withholding of any funds due or to become due to the contractor, pending compliance by the contractor and/or its subcontractors, with the terms of paragraphs (1) and (2).

“(4) Failure to comply with any of the terms of paragraphs (1) and (2) shall be a material breach of this contract.

“(5) The contractor shall include the provisions of paragraphs (1) through (4) in contracts with subcontractors so that the provisions will be binding upon each subcontractor.”

- (2) The city manager shall adopt rules and regulations for implementation of this section following the procedures set forth in section 2.019 of this code.

4.630 Human Rights - Housing Practices.

- (1) It shall be an unlawful housing practice for any person, because of race, religion, color, sex, national origin, ethnicity, marital status, familial status, domestic partnership status, age, sexual orientation, **gender identity**, source of income, or because an individual is a person with a disability to:
 - (a) Refuse to sell, lease or rent, or otherwise make available any real property to a purchaser, lessee or renter.
 - (b) Expel a purchaser, lessee or renter from any real property.
 - (c) Make any distinction, discrimination or restriction against a purchaser, lessee or renter in the price, terms, conditions or privileges relating to the sale, rental, lease, or occupancy of real property or in the furnishing of any facilities or services in connection with the real property.
 - (d) Attempt to discourage the sale, rental or lease of any real property to a purchaser, lessee or renter.
 - (e) Publish, circulate, issue or display, or cause to be published, circulated, issued, or displayed, any communication, notice, advertisement or sign of any kind, relating to the sale, rental or leasing of real property which indicates any preference, limitation, specification or discrimination based on race, religion, color, sex, national origin, ethnicity, marital status, familial status, age, sexual orientation, **gender identity**, or source of income, or because an individual is a person with a disability.
 - (f) Assist, induce, compel, or coerce another person to commit an act or engage in a practice that violates this subsection, and subsection (3) of this section.
 - (g) Coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of having aided or encouraged any other person in the exercise of, any right granted or protected by this section.
- (2) No person or other entity whose business includes engaging in residential real estate-related transactions shall discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, religion, color, sex, national origin, ethnicity, marital status, familial status, domestic partnership status, age, sexual orientation, **gender identity**, source of income, or because an individual is a person with a disability. As used in this subsection (2), "residential real estate-related transaction" means the making or purchasing of loans or providing other financial assistance:
 - (a) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

- (b) Securing residential real estate; or
 - (c) The selling, brokering or appraising of residential real property.
- (3) No real estate licensee shall accept or retain a listing of real property for sale, lease or rental with an understanding that a purchaser may be discriminated against with respect to the sale, rental or lease thereof because of race, religion, color, sex, national origin, ethnicity, marital status, familial status, domestic partnership status, age, sexual orientation, **gender identity**, source of income, or because an individual is a person with a disability.
- (4) No person shall, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, sex, national origin, ethnicity, marital status, familial status, domestic partnership status, age, sexual orientation, **gender identity**, source of income, or because an individual is a person with a disability.
- (5) For purposes of this section, receipt or alleged receipt of treatment for a mental disorder shall not constitute evidence of a person's inability to acquire, rent or maintain property.
- (6) For purposes of this section, discrimination includes:
- (a) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for such modifications on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted; or,
 - (b) A refusal to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.
- (7) It shall be an unlawful housing practice to discriminate against an individual in any manner set forth in subsections (1) to (4) of this section because of the race, religion, color, sex, national origin, ethnicity, marital status, familial status, domestic partnership status, age, sexual orientation, **gender identity**, source of income, or disability of any other person with whom the individual associates.
- (8) The prohibition against discrimination, distinction, or restriction because of sex in subsections (1) and (3) of this section **does**

not apply if the real property involved is such that the application of subsections (1) and (3) of this section would necessarily result in common use of bath or bedroom facilities by unrelated persons of opposite sex.

- (9) The prohibition against discrimination, distinction, or restriction because of source of income in subsections (1), (2), and (3) of this section does not forbid:
 - (a) Inquiry into and verification of source and amount of income;
 - (b) Inquiry into, evaluation of, and decisions based on the amount, stability or creditworthiness of any income or source of income;
 - (c) Screening prospective purchasers and tenants on bases not prohibited by this code;
 - (d) Refusal to contract with a governmental agency under 42 USC 1437f(a) (Section 8).
- (10) The prohibition against discrimination, distinction, or restriction because of sexual orientation **and gender identity** in subsection (1) of this section does not apply:
 - (a) Where the lessor is renting rooms in an individual dwelling unit occupied by the lessor as the lessor's residence; or
 - (b) To the rental of space in a bona fide church or other religious institution or organization, including churches, synagogues, religious schools, and other facilities used primarily for religious purposes.
- (11) The prohibition against discrimination, distinction or restriction because of familial status and age in this section does not apply with respect to housing for older persons. For the purpose of this subsection, "housing for older persons" means housing:
 - (a) Provided under any state or federal program that is specifically designed and operated to assist elderly persons, as defined by the state or federal program;
 - (b) Intended for, and solely occupied by, persons 62 years of age or older; or
 - (c) Intended and operated for occupancy by at least one person 55 years of age or older per unit. Housing qualifies as housing for older persons under this subparagraph if:
 - 1. Significant facilities and services are specifically designed to meet the physical or social needs of older persons or, if provision of such facilities and services is not practicable, such housing is necessary to provide important housing opportunities for older persons;
 - 2. At least 80 percent of the dwellings are occupied by at least one person 55 years of age or older per unit; and

3. Policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older are published and adhered to.
- (12) Housing shall not fail to meet the requirements for housing for older persons if:
- (a) Persons residing in such housing as of September 13, 1988 do not meet the requirements of subsections (a) or (b) of subsection (11) of this section. However, new occupants of such housing shall meet the age requirements of subsections (b) or (c) of subsection (11) of this section; or
 - (b) The housing includes unoccupied units. However, such units are reserved for occupancy by persons who meet the age requirements of subsections (b) or (c) of subsection (11) of this section.
- (13) Nothing in this section limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

4.635 Human Rights - Public Accommodations Practices.

- (1) It shall be an unlawful public accommodations practice for a place of public accommodation, a person acting on behalf of a place of public accommodation, or for any person to assist a place of public accommodation or a person acting on behalf of such place to:
- (a) Make any distinction, discrimination or restriction against any person because of race, religion, color, sex, national origin, ethnicity, marital status, familial status, domestic partnership status, age, sexual orientation, **gender identity**, source of income, or because an individual is a person with a disability; or
 - (b) Publish, circulate, issue or display or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign of any kind to the effect that any of the accommodations, advantages, facilities, services or privileges of such place of public accommodation will be refused, withheld from or denied to, or that any discrimination will be made against, any person because of race, religion, color, sex, national origin, ethnicity, marital status, familial status, domestic partnership status, age, sexual orientation, **gender identity**, source of income, or because an individual is a person with a disability, except as provided by laws governing the consumption of alcoholic beverages by minors and the frequenting of minors in places of public

accommodation where alcoholic beverages are served, and except for special rates or services offered to persons 55 years old and older[-]; **or**

- (c) ***Deny any individual access to the full and equal enjoyment of the privileges, benefits, goods, services, and existing facilities of such place of public accommodation, including restrooms, dressing rooms, showers and locker rooms that the individual deems most appropriate for that individual's gender identity.***
- (2) It shall be an unlawful public accommodations practice for any place of public accommodation, or any person acting on behalf of such place, to discriminate in any manner described in this section because of the race, religion, color, sex, national origin, ethnicity, marital status, familial status, age, sexual orientation, ***gender identity***, source of income, or disability of any other person with whom the individual associates.
- (3) It shall be an unlawful public accommodations practice for a place of public accommodation, a person acting on behalf of a place of public accommodation, or for a person to assist such a place or person, to fail or refuse to offer visitation privileges to the domestic partner of an inmate, patient or resident on the same basis as those privileges are offered to the spouses of other similarly situated inmates, patients or residents. For purposes of this paragraph, "place of accommodation" shall be construed to include, but shall not be limited to, the following:
 - (a) A jail or other place of incarceration;
 - (b) A funeral home;
 - (c) A hospital or other health care facility; and
- (d) A residential facility for the care or treatment of elderly persons or persons with mental or physical disabilities, afflictions, or diseases.

4.645 Human Rights - Enforcement.

- (1) **Initiation.** Unless a different procedure is established by administrative order of the city manager pursuant to section 2.019 of this code, an individual claiming to be aggrieved by a practice prohibited by sections 4.613 to 4.640, may:
 - (a) Within the time limits prescribed in section 4.650, file a request for mediation with designated staff, on forms available from the staff. The individual may, at the same time, or at any subsequent time within the limits prescribed in section 4.650, file a complaint pursuant to subparagraph (b) of this subsection. Filing a request for mediation, however, shall not constitute a timely filing for purposes of complying with the time limitations on filing a complaint prescribed in section 4.650 of this code.

- (b) File a complaint with the state of Oregon Bureau of Labor & Industries (BOLI), or such other enforcement agency as the city manager shall contract with for administration and enforcement of sections 4.613 to 4.640 of this code, on forms available from the commission.

(2) Mediation.

- (a) Within ten working days of receipt of a request for mediation, the staff shall determine whether the request is consistent with the standards for mediation established in commission rules and shall notify the parties whether mediation is to occur. If the mediation request is accepted, the notice shall inform the parties of the identity of the mediator and shall establish a time for mediation to occur, which is not later than 60 days from the date the request was filed. Participation in mediation is voluntary, and either party may reject the offer to mediate. Mediation shall be an informal process conducted in accordance with rules and standards established by the commission. If the request does not meet the commission's mediation standards, the request shall be denied.
- (b) Mediation sessions are not open to the public, but any resolution of the dispute reached through mediation shall not be final until filed with the commission.
- (c) In the event either party rejects mediation, fails to appear at the time mediation is scheduled, or the mediation does not result in a settlement, the mediation request will be dismissed.

(3) Complaints filed with enforcement agency.

- (a) Pursuant to its contract with the city, BOLI, or such other enforcement agency with whom the city contracts, is authorized to enforce the provisions of sections 4.613 to 4.640 of this code in accordance with its adopted procedures and applicable state law.
- (b) Complaints filed by persons claiming to be aggrieved by a practice prohibited by sections 4.613 to 4.640 of this code shall be processed and enforced by the enforcement agency in the same manner, and with the same enforcement powers as afforded to the enforcement agency under state law for violation of comparable state statutes.
- (c) If a complaint is found to be justified, the complainant shall be entitled to the same remedies as afforded a complainant under comparable state statutes.
- (d) ~~[Orders]~~ **An order** issued by an enforcement agency pursuant to this section shall be ~~[viewed as one]~~ **fully enforceable by the city in the same manner as an order**

issued by a hearings ~~officer~~ **official** employed by the city within the meaning of [ORS 46.045(3) and shall be fully enforceable by the city] **section 2.370 of this code.**

- (4) Private Right of Action. Any person claiming to be aggrieved by an unlawful discriminatory act under the provisions of sections 4.620 to 4.640 of this code shall have a cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate. Such persons shall be subject to the procedural limitations that apply to similar grievances under state law, as provided in ORS 659A.870 to 659A.885. The court may grant such relief as it deems appropriate, including, but not limited to, such relief as is provided in ORS 659A.885.

Section 4. The City Recorder, at the request of, or with the concurrence of the City Attorney, is authorized to administratively correct any reference errors contained herein or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.